

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35557

**REASONABLENESS OF BNSF RAILWAY COMPANY
COAL DUST MITIGATION TARIFF PROVISIONS**

**BNSF RAILWAY COMPANY'S REPLY TO THE
JOINT PETITION OF WCTL'S MEMBERS TO POSTPONE
THE MARCH 13, 2012 TECHNICAL CONFERENCE**

**ENTERED
Office of Proceedings**

MAR 08 2012

**Part of
Public Record**

BNSF Railway Company ("BNSF") hereby replies to the March 2, 2012 Joint Petition of Ameren Energy Fuel & Services Company; Arizona Electric Power Cooperative, Inc.; Austin Energy; Cleco Corporation; CPS Energy; Entergy Services, Inc.; Kansas Power & Light Company; Lower Colorado River Authority; MidAmerican Energy Company; Minnesota Power; Nebraska Public Power District; Omaha Public Power District; Texas Municipal Power Agency; Western Farmers Electric Cooperative; Western Fuels Association, Inc.; and Wisconsin Public Service Corporation ("WCTL's Members") to postpone the March 13, 2012 technical conference to address discovery issues ("Petition to Postpone Technical Conference"). The technical conference was set by the February 27, 2012 decision of the Director, Office of Proceedings ("Director's Decision"). On March 1, 2012, WCTL's Members appealed the Director's Decision, which concluded that subpoenas would be issued to WCTL's Members after the March 13, 2012 technical conference, to the full Board. BNSF replied in opposition to the appeal on March 6, 2012.

BNSF opposes the proposed postponement of the scheduled technical conference.

WCTL's Members claim that the technical conference should be postponed because the

conference may become unnecessary if the Board grants the pending appeal and, in that event, WCTL's members will have wasted time and money by negotiating on discovery issues and participating in the technical conference. BNSF recognizes this outcome is a possibility but believes that the Board should balance the risk of some unnecessary expenditure of resources in negotiating over the scope of BNSF's discovery requests against the greater delay in completing this proceeding that would result from a postponement of the technical conference. BNSF believes that the proper balance should be to adhere to the March 13, 2012 date for the technical conference.

Both BNSF and WCTL have informed the Board of their desire to resolve the current challenge to the reasonableness of the safe harbor provision of BNSF's coal dust loading rule as quickly as possible.¹ The expedited schedule adopted by the Board will unavoidably have to be extended, as the Director recognized, to deal with the pending subpoenas and WCTL's appeal of the Director's Decision. But it is critically important that the schedule extension be kept to the minimum necessary to complete discovery. BNSF has been making progress in addressing the serious problem of coal dust on Powder River Basin rail lines, but BNSF is concerned that a delay in this proceeding will slow down that progress. The parties should use the time available now to begin to fashion a properly tailored response to BNSF's subpoenas. BNSF stands ready to meet with counsel for WCTL's Members prior to the March 13, 2012 technical conference in an attempt to limit any burden that would be imposed by responding to its subpoenas.

WCTL's Members also ask for a postponement of the technical conference on grounds that the Director's Decision indicated that subpoenas would be issued following the technical

¹ See Joint Appeal of WCTL's Members of the February 27, 2012 Decision by the Director, Office of Proceedings, at 16 (filed March 1, 2012); BNSF Railway Company's Reply to Joint Appeal of WCTL's Members, at 13 (filed March 6, 2012).

conference. WCTL's Members claim that if the subpoenas are issued while the appeal is pending, they may be directed to comply with subpoenas despite their challenge to the validity of the Director's Decision. BNSF does not oppose holding off on the actual issuance of subpoenas until the Board has ruled on WCTL's Members' appeal. But by going forward with the technical conference, the Director will be in a position to issue the subpoenas promptly following the Board's ruling on the appeal.

For the reasons explained above, BNSF asks that the Board reject the request of WCTL's Members to postpone the March 13, 2012 technical conference.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2012, I caused a copy of the foregoing to be served by e-mail or first-class mail, postage prepaid, upon all parties of record in this case as follows:

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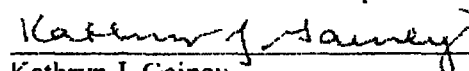
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